Swami Ramanand Teerth Marathwada University, Nanded,

Maharashtra, India

(UGC recognized, NAAC Re-accredited B^{++} grade, State University)

"An Analytical Study of Forensic Evidence and the Indian Judiciary: An Examination of Admissibility and Reliability."

Research Proposal Submitted

In Partial fulfilment of Registration to

Ph. D. Program

In the subject

LAW

Faculty of

LAW

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Year-2024

An Analytical Study of Forensic Evidence and the Indian Judiciary: An Examination of Admissibility and Reliability.

1. Introduction to Proposed Research Topic:

Crime is a very old world and has evolved with the evolution of Homo Sapience. Generally, with the development of mankind there was a need generated when the human started living in the society. For giving equal rights and honor of the society certain do's and don'ts was set for the people. Under these set parameters of rules it was observed and evaluated that none of the society member breach these set rules and if they do so then they use to punish and penalize to keep the society free from the evil. Therefore, this concept evolved into the process of investigation and discovery of crime and administration, later which also laid the foundation of various institutions for trial and investigation to impart justice to all impartially.

One of the essentials of legal systems in across the world is the effective mechanism for civil and Criminal Justice. Crime free society is necessary for physical, mental and spiritual development of individuals, which is only possible through effective civil and criminal justice system where police, as an investigation agency and the civil and criminal courts, as adjudicators play an important role. As effective policing is essential for effective enforcement of laws, similarly, effective justice delivery system through courts is necessary for speedy and meaningful justice, particularly in the criminal matters. The need for better administration of Criminal Justice has been felt by State since the dawn of the human civilization and continues to be the goal of human endeavour till today, however, the challenges before it also got multiplied with the passing of time as offenders start using the new methods and techniques in commission of crime and the detection of same has also become a daunting task, if not impossible, for the criminal investigation agencies as well as for criminal investigators. A number of institutions like police, prosecutors, magistrates and courts have been developed in the course of time for the better administration of law and justice ,by the way of forensic science through admissibility and reliabity of forensic evidence in civil and criminal trials.

The term "Forensic" means quality or characteristic of a thing or anything of scientific nature suitable for, a court of law. Hence, forensic science, as it is so pronounced, is a broad term that embraces all of the scientific disciplines that are utilized in investigation with the objective of bringing civil suits and criminals to the

justice, Forensic comes from the Latin word forensic, meaning “in open court” Forensic Science - Use of Science & Technology for Legal Purpose i.e. Application of various Basic Sciences to provide scientific evidences to court of law. It is based on the LOCARD’S PRINCIPLE OF EXCHANGE

1. “Whenever two objects come into contact, they always leave a trace on the other.”
2. Every criminal can be connected to the crime by contact traces carried from or left at the crime scene.
3. Forensic science plays a vital role in the criminal justice system by providing scientifically based information through the analysis of Circumstantial Evidence.

Some of the types of Forensic Evidence areas are follows

Physical Non-biological types of evidence like forms of fibres, paint chips, explosives

- Questioned Document Examination
- Forensic Chemistry
- Forensic Ballistics
- Forensics Psychology
- Digital or Computer forensics
- Biological Biological evidences include blood, semen, saliva, faecal material, urine, hair and bone.
- Fingerprint Analysis
- Forensic Deontology
- Forensic Toxicology
- Forensic Anthropology
- Forensic Pathology
- Forensic DNA
- Brain writing

“Civil and Criminal Judicial System in our country is at cross-roads, many times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court. Investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence or forensic evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. .Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for

crime detection. In a civil trial the issues framed and in the criminal trial, in order to zero down on the relevant facts, the judge has to rely on the knowledge and opinion of certain experts as he may not be in a position to appreciate the technical details involved in a particular case. Evidence is given by the expert of the relevant field in the form of his opinion which is based on the information that he has gathered from the facts of the case. This evidence supplements the assertions of the judge and, together, they complement each other and combine to form the basis of the judgment. However, the evidentiary value of the opinion given by the expert is not unshakeable because of the discretionary power available to the Court, which may choose to accept or reject it. This discretionary power in the hands of the Court arises from Section 45 of the Indian Evidence Act, 1872 and S.39 (1) of the Sakshya Adhiniyam, 2023, which, theoretically, gives a lesser degree of importance to expert evidence by terming it as merely corroborative in nature.

S.45 of Indian Evidence Act, 1892, S.39 (1) of the Sakshya Adhiniyam, 2023 states as, "When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identify of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identify of handwriting or finger impressions, are relevant facts."

Such persons are called experts.

The careful reading of the section gives us a vague idea about who is an expert, by the words – the persons especially skilled. There is no clear mention about qualifications, experience or any particular attainment. But especially skilled means there must be something to show that the expert is skilled and has an adequate knowledge of the subject.

Who is an expert? -

Expert – A person instructed by experience is called 'expert'.

Witnesses ordinarily are to testify the facts in their direct knowledge leaving it to the judge to form opinions, inferences or conclusions on the basis of such facts.

Witnesses are ordinarily not to say what they thought or believed to be and therefore their opinions are irrelevant in a judicial enquiry, but in certain special matters requiring special skill in the subject concerned, opinions of persons having special study, training or experience are accepted as evidence.

Expert evidence in a criminal trial would be just a fraction of the totality of the evidence on the appreciation of which the judge takes decision. The Court takes into account all the other evidence at hand along with the opinion of the scientific expert, which is just one piece of evidence required to be taken into consideration and appreciated for its evidentiary value.

An expert witness is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of such criteria to the facts proved by the evidence of the case.

Importance of Forensic Evidence –

Forensic science is a specialized form of knowledge. A layman may not be in a position to have forensic science knowledge without proper education and training. The knowledge of the forensic expert is always essential in the civil and criminal justice system. The forensic evidence given by a forensic science person comes to the help of the Court in deciding various matters. Particularly, in civil suits the documents produced as the evidence, in criminal case of death of a person, forensic evidence is inevitable. Such evidence can be obtained through post-mortem report. The importance of the post-mortem report is as a tool in the hands of the prosecution. It becomes useful to decide the guilt of the accused.

2. Statement of Problem:

The evidence presented before the Court has its own value. The technological advancements and changes in the scientific field and the social structure have to be taken into consideration by the legislature. This research tries to provide information to understand the precise nature of the problem in Civil and Criminal Justice System and to plan a response to it.

The research problem is –

Can the science play a flawless role in ensuring the justice?

What is the role of forensic evidence in the Civil and Criminal Justice System in India?

How far the judicial precedence proves the importance of forensic evidence?

How the forensic evidence is regarded as corroborative evidence?

Can the rate of conviction be increased substantially, if we accept and allow the use of science in collection of traces and evidence, available at the crime scene?

In the civil suit and in the criminal cases of offences against women, more particularly forensic evidence, to regard it as absolute piece of evidence, in the light of Scientific advancements?

How can be the hurdles minimized in collection of forensic evidence that the crime investigators have to face while unearthing the truth of the crime?

3. Review of Literature and Development in the relevant Subject:

While doing this research, this researcher has taken the help and guidance from celebrated works of various eminent jurists, who are renowned for their expertise in the subject of application of forensic science and technology in the field of law and law enforcement. Some of them are:

1. Turvey, Brent E. and Crowder, Stan: Ethical Justice: Applied Issues for Criminal Justice Students and Professionals (Academic Press-An Imprint of Elsevier, Oxford, 2013): In this eminent Book the authors pointed out the application of chemistry and physics in the procedure of crime investigation. For instance, a chunk of paint of unknown vehicle found on the damaged bicycle of victim in an accident can lead to the fair conclusion of the case. It emphasis on successful Criminal Justice System laying the fundamentals for the same and elucidate the role of scientific evidence**.**

2. Foster, Kenneth R. and Huber, Peter W., Judging Science: Scientific Knowledge and the Federal Courts (The M.I.T. Press, Cambridge, London, 1999): This work of Kenneth R. Foster and Peter W. Huber provides an insight of legal and ethical issues emerged during the proceedings before the courts relating to crime investigation. It also, sometimes, raise question whether scientific knowledge is reliable in a particular matter? Answer depends on facts and circumstances of a particular case, where in some cases such knowledge may be appreciated while in others the same may be avoided.

3. Sharma, Dr. B.R., Forensic Science in Criminal Investigation & Trials (Fifth Edition, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2015): Dr. B.R. Sharma's work is a celebrated treatise covering almost entire range of forensic science including D.N.A. Profiling, Finger Prints, trace elements and many more topics. Major thrust in this book is on computer crimes, video- 21 conferencing, Lie Detector,

Narco-Analysis, Brain Printing tests. Book also discusses the automation in all aspects of forensic science, especially its tools and techniques.

4. Durston, Gregory; Evidence-Text & Material (Oxford University Press, Oxford, 2nd Edi, 2011): This Book of Gregory Durston gives deep insight about relevancy, cogency and admissibility of evidence before the court. What matters can and cannot be established by adducing or without adducing the evidence, this book reveals and went on to explore the mindset of investigators and judges while dealing with the evidence of scientific nature**.**

5. Jaising P. Modi, Medical Jurisprudence and Toxicology (LexisNexis, New Delhi, 2008): J.P. Modi, renowned Medico-Legal Jurist of India authored this book which deals very comprehensively with medical aspects of forensic science, legal procedure in the court and technical issues relating to the examination of medical witnesses and evidence

4. Importance of the Study:

The law is always developing to deal with new fields of expertise. In the field of forensic science and technical field, there are fast developments in last few years. Taking into consideration these developments the laws should be well equipped with the use of scientific knowledge. When generally one speaks about expert testimony, it is in the form of opinion. The accuracy of knowledge in the new scientific era may make it mandatory for the courts to accept the opinions as conclusions.

There can be different types of suits and cases where forensic evidence is admissible. One in which the court has to depend on the existence of facts which are not known to the common person or which are not a part of common knowledge and hence it becomes necessary to take the help of those, whose knowledge, experience or study enables them to speak with authority. In some of the cases it becomes necessary to draw the conclusions from the stated facts, which totally depend on scientific or professional knowledge and which is not possible to draw by ordinary intelligence.

In some of the cases, the facts are to be stated by the experts and the conclusion is to be drawn by the judge, in other type of cases, the expert states the facts, draws the conclusion, in the form of opinion and the opinion may be accepted or rejected by the court.

The forensic science laboratory plays a critical role in our justice system. Well-presented forensic evidence can be very, very persuasive to a jury. The forensic

laboratories, therefore, plays a pivotal role in the search for justice, it is also important for the defendant to take the proper defense.

5. Objectives of the proposed research work:

1. To study and Understand the concept of Forensic (Criminalistics) Evidence.
2. To study and examine theoretically the Role and impact of forensic evidence with respect to history of forensic evidence, types, advantages and disadvantages of forensic evidence.
3. To focus on the international legal perspective in relation with forensic evidence of various countries.
4. To examine admissibility and reliability of forensic evidence in the land mark cases
5. To focus on the Legal Provisions Supporting to Criminal Investigation with the judicial approach.
6. To explore the Restriction in the use of Forensic Evidence in Indian Legal Scenario.
7. To provide suggestions and recommendation for implementation of legal admissibility and reliability on forensic evidence.

6. Hypothesis:

For the fulfilment of the objectives of the study the following hypothesis has been formulated.

1. It is believed that Proper utilization of forensic science tools, and technique to collect the forensic evidence for trial will provide more accuracy in judging the culpability of the accused in a more scientific and accurate manner.

2. It is believed that scientific investigation of crime with the aid of forensic science has more probative value than direct evidences however Indian Criminal Justice System fails to utilize its relevancy in deciding criminal cases.

3. It is considered that the Non-Reliability of forensic Evidence by the Courts is resulting in defeat of justice and causing misery to the victims.

7. Scope of the Work:

The researcher wants to mention that this research is not an exhaustive one. For the sake of understanding the role of forensic science as an expert witnessing, the comparative study of International legal perspective is necessary.

Forensic evidence is inevitable in civil and criminal cases and accordingly the Government has established laboratories in the country and other institutions in the country are offering forensic science and technology service in the administration of civil and criminal justice, but due to the time constraint & fear of broadening the scope of the research, the researcher has put the limitations on the research.

8. Research Methodology:

Following is the research methodology to be used for

With the advent of science in every field there is a necessity to examine the expert knowledge in witnessing. For this research the method primarily used is doctrinal method. Print material is the primary form of instructional material. There are 2 types of materials that have to be reviewed.

1) The literature concerning the concepts & theories

2) Practical and scientific literature consisting of studies made earlier.

9. Chapter Scheme:

The proposed study consists of total six chapters as follows:

CHAPTER I: Introduction.

CHAPTERII: Theoretical Study on Forensic Evidence, its types, history, advantages and disadvantages.

CHAPTER III: International Perspective

CHAPTER IV: Forensic Evidence in Civil and Criminal Justice System.

CHAPTER V: Judicial Approach

CHAPTER VI: Conclusion and Suggestions.

10. Motivation for the Researcher:

The researcher has always an interest in both civil and criminal justice system and specifically with their related issues. In the course of time, the researcher is motivated by the provisions of Indian Evidence Act and Sashay Adhiniyam,2023.In the civil case the onus probed lies on the Plaintiff to prove his case, where as in the prosecution case the prosecution submits the evidences to prove the crime of the accused and the judge gives the judgment accordingly. In between these two processes one important thread is connected and that is the forensic evidence. Evidence presented in the Court by the experts, such as; handwriting expert, medical expert must be of great importance. It is based on scientific knowledge which may not be easily accessible or available to the persons having no technical knowledge,

including the judges and so the opinion of the medical expert by the way of forensic evidence is always have an evidentiary value regarding its relevancy, Admissibility and Reliability.

11. Expected Outcome:

The researcher wants to make a contribution to the civil and criminal justice system, because the forensic evidence is regarded as the evidence that, it is based on science and technology, and adduced as the opinion evidence, giving least importance to it, but the researcher's suggestions will give value to the forensic evidence, more particularly in certain both civil and criminal cases regarding murder, rape and dowry death etc..

12. Proposed work plan/Year-wise plan of work and targets to be achieved:

I Year plan: The collection of basic materials required for this research. This includes collection of Journals, Books and some research papers related to the research. We would like to visit few libraries and institutions like IITS, IISC, IISER/NISER, TIFR and some universities for collection of literature. In this year, we will complete course work. Two progress reports will be submitted at the end of this year.

II Year plan:

The collected material will be proceeded and attempt will made to discover the finding in the direction of research different methodology, tools, techniques and guidance will be apply for new research problems. Some national and international visits for the guidance of research work verification, methodology verification. To the study of new research problem in different form and it will be submitted to research journals for publication. Two progress reports will be submitted at the end of this year.

III Year plan:

The outcome of our research work will be presented in national and international gatherings such as, conferences, seminars, and workshops during this year. Also we discuss the present new research work findings with various researchers, lecturers, students. The research work will be published in the several reputed journals. The printing and binding of project work. The papers of project work based on existence

theory will be communicated to the different national and international journals for the publication. Two progress reports will be submitted at the end of this year and submission of final synopsis will be done in this year to the authority.

Place: Latur

Date:

Sign

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